

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

INPAENG PHADY, Petitioner, vs. UNITED STATES OF AMERICA, Respondent.	4:16-CV-04144-KES ORDER ADOPTING REPORT AND RECOMMENDATION AND GRANTING MOTION TO DISMISS
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Petitioner, Impaeng Phady, filed a motion under 28 U.S.C. § 2255 for a sentence reduction. Respondent moved to dismiss the motion because the claim is procedurally defaulted, does not state claim for relief, and does not fall under application of Amendment 794. The court referred the motion to Magistrate Judge Veronica Duffy. On January 26, 2017, Magistrate Judge Duffy submitted a report and recommended that Phady's petition be dismissed and respondent's motion to dismiss be granted. No objections to the report and recommendation have been filed under 28 U.S.C. § 2254, Rule 8(b)(3). The court has considered the case de novo and adopts the report and recommendation in full. Therefore, it is

ORDERED that the magistrate judge's report and recommendation (Docket 8) is adopted in full and respondent's motion to dismiss (Docket 6) is granted.

IT IS FURTHER ORDERED that based upon the reasons set forth herein and pursuant to Fed. R. App. P. 22(b), the court finds that petitioner has not made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). Therefore, a certificate of appealability is denied.

Dated February 17, 2017.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE